SZABÓNÉ, NAGY TERÉZ

VÉTSÉG, BŰNTETT, SÚLYOS BŰNTETT

(Misdemenaor, Felony, Grave Felony) Közgazdasági és Jogi Könyvkiadó Budapest, 1977. 335 p.

Prof. Teréz Nagy-Szabó's book "Misdemenaour, Felony, Grave Felony" came out five years ago, but its message has not became dusty. Why is this study still so current? Because of the age and circumstances of its publication and the possibility to look over the technical skills of the penal codificational process started in the middle of the seventies[1] behind which the "evergreen" questions fo the connection between the legal science and legislation can be found.

Of course, this is only one factor of its up-to-dateness, we could say, the objective one.

On the other hand, it is attributable to the author's own work, that certain proposals offered in her book have influenced he elaboration of the codificational conceptions, even before their printed appearance. Regarding to the distinction of felony and misdemenaour, and the hierarchical construction of administrative infraction-misdemenaour-felony, Prof. Szabó's conclusions could be followed point by point in the "proposals of the committee of codification" published in periodicals.[2] Moreover, in the final legal definition the legislator used many of these proposals showing the greatest appreciation for the author, what a professor can get in her life, that her ideas come true in act. The proposals that were disregarded during the legislation give an other up-todateness to the ideas that were realized in the act, namely, they are summed up on the basis of experiences: can they be expressed as a claim against the effective system, even now?

And, the conclusion of the study is current in this effect, too. It is enough to refer to the author's expectations for internal proportion of the system of the definition of the offences and grading the system of punishments, the significance of recidivism or the distinction of felonies and misdemenaours.

Of course, this is not a coincidence, but the result of a long, hard researc: the author has three monographs on the same matter from the earlier years.[3]

At the approach of the question on differentation Prof. Szabó's principled starting point is, that the legal menas of crime control has to be built on the real results of socio-economic development. At evolving of substantive and procedural legal institution both requirements, the assurance of legality, effectiveness and personal guarantees have to be kept in view. In our country only a well-distinguished system of responsibility, penalties and measures can suit these requirements. In the substantive law its conditions are the consistent distinction of unlawfulnes forms, namely, disciplinary of administrative infractional and penal offences, hierarchical system of forms of unlawfulnes and in addition to this, to form the internal grades of under penal law.

In procedural law the penal and other procedural forsm have to be distinguished and in the penal procedural law either the whole procedure or only a part of it has to be conducted according to the simpler rules which differ from the general procedure.

This aspect is performed consistently through both parts of Prof. Szabó's book. The first part is dealing with the distinction of misdemenaours and felonies and the second one with the distinction of felonies and grave felonies.[4] In addition, in the first part she deals with the distinction of misdemenaour and administrative infraction.

The author marked her study as a "primarily practical" work, with the intention to help the codificational drafting. Thus, instead of comparing the views expressed in the relevant literature, the method of the elaboration can be describen as an analysis of legislation, and the application of law, the data of criminal statistics and the examination of an ixtensive comparative legal material.

On the basis of experiences gained by summing up the solutins in the European socialist countries, the author clarifies the conceptional problems of administrative infraction-misdemenaour-felony-grave felony by criticizing the deficiencies of the legal regulations valid at the relevant time.[5] These critical comments comprise the system of substantive law and are in connection with the following important issues: the system of the definition of the offence in the Penal Code (P.C.), the system of penalties and penal measures, the distinction of misdemenaour and administrative infraction, the categories of misdemenaour and grave felony.

Prof. Szabó criticizes the system of the definition of the offence in the P.C. primarily, because among the upgrading conditions the conditions linked to the objective side of the criminal offence dominate over condition evalualing the danger of the person to society.

Concerning the system of punishments of the P.C. her comments are directed against the centralposition of loss of freedom. In addition to unreasonably great number of criminal offences punishable with loss of freedom this appears in the fact, that these penalties may be dranged into loss of freedom if they cannot be implemented in their originally imposed form. In these cases the implementation is absurd, since originally in the court's opinion there was no reason to inflict the loss of freedom.

In this way the law uses the substitutive loss of freedom as the sanction of not paying the fine or vialating the labour discipline.

This problem continues, since a short term of loos of freedom has to be inflicted when commutizy the fine and this is in contradiction with the special preventive aim of the punishment.

Analizing the boarder line between administrative infractions and misdemenaours the author refuses the distinction based on "all the circumstances of the case", because it effaces the difference between the two forms of responsibility and in the practice it breaks the hierarchy of legal consequences endangering the realization of the principle of legality, so does not give to the applicator of law more, as if the act did not mention a single criterion.

Prof. Szabó criticizes even that the penal law does not express the differences between the felony and misdemenaour based on their danger to the society and the legislator is satisfied with expressing the distinction based on the measure of punishment. After having analized critically the situation of Hungarian penal administration of justice in the seventies, the author expresses her proposals which aim at organizing the legal distinction between administrative infraction-misdemenaour-felony-grave felony on a new basis. Evolving the general concept of misdemenaours she attaches importance to the followings:

- the contents of the offended or endangered social relations
- the measure of the injury
- the form of culpability
- the grade of expectability
- past record.[6]

She draws up originally her conceptions regarding the legal consequences for misdemenaourals, too. First the proportion of loss of freedom punishment for misdemenaours has to decreased for the good of punishments not involving loss of freedom, further on alternative sanctions have to be prescribed, and at last, the fine being imposed for misdemenaours should not be commutable into loss of freedom. In Prof. Szabó's opiniot it is worth of considering also that preparation and attempt for misdemenaour should not be punishable and averting the result or the subsequeint compensation should be a condition ceasing the punishability.

The notion of misdemenaour being formed in this way and the system of responsibility have to be considered as a centre and the place of felony or administrative infraction has to be described according to this "centre". In order to cease the inconsequeinces grown up at the dividing line of *criminal offence and administrative infraction*, Prof. Szabó suggests to distinct the misdemenaour and administrative infraction with "exact, definitive criterions". For example, in cases of administrative infractions against property, over the limit other factors have to be taken into consideration too, and only those upgrading conditions have to be maintained, which themselves represent a legal injury. At the s.c. double-form acts it has to be decided: which side is the "stronger". Where the administrative

infractional character is the stronger, the misdemenaour should be the upgraded case of administrative infraction, and where the criminal offence character is the stronger, there it has to be decided inversely: the administrative infraction should be the mild variety of misdemenaours.

The author comes forward with the claim to clear consistently the relation of *misdemenaour and felony*. In her opinion it can be realized in from possible connections between misdemenaour and felony in cases, in which the misdemenaour is the basic form of the felony (or the felony is the upgraded form of misdemenaours) the legislator clarifies in all situations, whether the upgrading condition increases really the danger to society of the action so, that it has to be declared as a felony.

The notion of *grave felony* is unclear at the present time. It is supported by the fact, that the notion of grave felony by the legal evaluation does not coincide with the notion of grave felony in the judicial practice, therefore the author's proposal to tipyfy this sphere has a great importance. Prof. Szabó distinguishes three groupes:

- the basic forms of certain most grave felonies
- the first upgraded forms of certain grave felonies
- the third and fourth level upgraded forms of certain felonies.

For the lower distinct line of punishemnt she cescribes the term of loss of freedom between 2–8 years.[7]

According to the author's proposal it had better discribe the notion of grave felony in the General Part of P.C., and in order to create harmony between the legal and practical evaluation the present upgrading system, has to be made more simpler, clear and realistic. The upgrading conditions have to be reconsidered from the point of view whether they really express an increased danger to the society.

This short summary can show how divergent the relations of internal differentation of penal responsibility are, and I do believe that the first ideas are verified by these, namely, the author's conclusions formed after meny research are current parts of legal thinking in our days.

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NOTICES

[1] Complex legislational process of penal administration of justice, the results of which are the Act IV. of 1978 (P. C.), the Code of Criminal Procedure and the law decree on execution of punishment.

[2] C. f. G. Berkes–J. László: „*A bűncselekmény és a büntetőjogi felelősség – Kodifikációs elgondolások* (The Criminal Offence and the Penal Responsibility – Codificational Conceptions) *Magyar Jog*, 1977 p. 281–288 and reviewed book p. 121–145.

[3] See Prof. T. Nagy-Szabó: *„A büntető eljárás egyszerűsítése – tekintettel a kisebb jelentőségű bűntettekre* (Simplification of the Penal Procedure – with Regard to the Less-important Flonyes) 1970, „A szocialista büntető igazságszolgáltatás egységesítése és differenciálása" (The Unification and Differentiation in Socialist Criminal Justice) 1978 Budapest.

[4] The book consist of 318 pages, six chapters. Chapter 1: Legislational and Legal Applicational Precedents on Distinction of Misdemenaour and Felony; Chapter 2: Distinction of Felony and Less-important Felony in European Socialist Countries; Chapter 3: Criterions of Misdemenaours; Chapter 4: Legal Applicational and Legal Dogmatical Precedents of Differentation, Chapter 5: Notion and Sphere of Grave Felonies in Penal Codes of European Socialist Countries; Chapter 6: Views of Forming of Grave Felonies.

[5] Act V. of 1961 which has been repealed by the Act IV. of 1978 (Valid from July 1 1979).

[6] Reviewed book, p. 100

[7] Reviewed book, p. 156–168.